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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/334,125	06/15/1999	PHYLLIS LEITHEM	0077079-0057	4961
31013 7590 11/19/2008 KRAMER LEVIN NAFTALIS & FRANKEL LLP INTELLECTUAL PROPERTY DEPARTMENT 1177 AVENUE OF THE AMERICAS NEW YORK, NY 10036				
EXAMINER STEPHENS, JACQUELINE F				
ART UNIT 3761		PAPER NUMBER		
NOTIFICATION DATE 11/19/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

klpatent@kramerlevin.com

Office Action Summary

Application No.

09/334,125

Applicant(s)

LEITHEM ET AL.

Examiner

Jacqueline F. Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 61 and 62 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 61, 62 is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

EX PARTE QUAYLE

This application is in condition for allowance except for the following formal matters:

Interference

Claims 61 and 62 are allowable. The only question to be resolved prior to allowance is the question of priority of inventorship, which is properly resolved under interference proceedings.

Under MPEP 2304.02 (October 2005 or later), the applicant is required to suggest an interference under 37 CFR 41.202(a) in order to have applicant's view as to how the interference should be declared on record. Guidance for current interference practice may be found in MPEP Chapter 2300 (October 2005 or later) and in Federal Register Vol. 69, No. 155; August 12, 2004; beginning 49990-49996. See also 37 CFR Part 41.

It is noted that applicant has previously submitted requests for interference under 37 CFR 1.607(a). It is further noted that on January 24, 2008 applicant resubmitted said request noting while styled under 37 CFR 1.607(a), it conformed in substance to 37CFR 41.202. Respectfully, such is not the case. First, the claims of the instant application have been amended during prosecution. Thus the claims discussed in the request are not commensurate in scope with the claims of the application. Second, the requirements of 37 CFR 41.202 (a)(3) are not included in the prior request: applicant

needs to explain the differences in the claims via the required claim chart and address why the claims interfere within the meaning of 37 CFR 41.203(a). For example there are differences between the proposed count and the pending claims with respect to the temperature ranges and the chemical crosslinking, at least. The requirements of 37 CFR 41.202(a) 5 and 6 need to be updated with respect to the pending claims, and further formatted in chart form as required by the rule. In sum, applicant needs to repackage the prior request into the current format required by the rule while bringing the request up to the present state of prosecution.

Declaration:

The declaration filed December 8, 2003 in response to the requirement for a new declaration is insufficient to overcome the requirement. Specifically, applicant's representative may not execute a declaration on behalf of an inventor. A supplemental declaration from the two inventors lacking an express statement of citizenship is acceptable: a full new declaration from all inventors is not needed. Should applicant's representative find difficulty in obtaining this substitute declaration, remedies under 37 CFR 1.47(a) may be available. Further, this issue will not preclude referral of the file for consideration of interference: however, applicant is noticed the prior declaration remains deficient and this issue will need to be resolved prior to any allowance of the application.

Prosecution on the merits is closed in accordance with the practice under Ex Parte Quayle, 1935 C.D. 11,453 O.G. 213.

A shortened statutory period for reply to this action is set to expire two months from the mailing date of this letter .

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F. Stephens whose telephone number is (571) 272-4937. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jacqueline F Stephens/
Primary Examiner, Art Unit 3761

